

Exhibit 16:May 16, 2019 Deposition Transcript of Samuel Katz

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1 **Volume 1**
2 **Pages 1-202**
3 **Exhibits: 1-14**

3 **CONTAINS CONFIDENTIAL BUSINESS INFORMATION,**
4 **SUBJECT TO A PROTECTIVE ORDER**

5 **UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF MASSACHUSETTS**
7 **Civil Action No. 1:18-cv-10506-ADB**

7 **SAMUEL KATZ, et al., an individual,**
8 **on his own behalf and on behalf of**
9 **all others similarly situated**
10 **Plaintiffs**

11 **vs.**
12 **LIBERTY POWER CORP., LLC, et al.**
13 **Defendants**

14
15 **CONFIDENTIAL VIDEOTAPED DEPOSITION OF SAMUEL I. KATZ**
16 **Thursday, May 16, 2019, 9:51 a.m.**
17 **Eckert Seamans Cherin & Mellott, LLC**
18 **Two International Place, 16th Floor**
19 **Boston, Massachusetts**

20
21 **---Reporter: Joan M. Cassidy, CSR, RPR, RMR, CRR---**
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PROCEEDINGS

10 The case is Samuel Katz, et al., versus
11 Liberty Power Corp., LLC, et al. The deponent today
12 is Samuel Katz. The court reporter is Joan Cassidy.

13 And would counsel please identify
14 themselves and the parties they represent, and
15 afterwards our court reporter will swear in the
16 witness and we can proceed. Counsel?

17 MR. BRUNDAGE: Jeffrey Brundage for the
18 defendants.

19 MS. MOYNIHAN: Rachel Moynihan for
20 defendants.

21 MS. PARASMO: Grace Parasmo for
22 plaintiffs.

23 MR. LIEBERMAN: Yitzchak Lieberman for
24 plaintiff Samuel Katz.

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1 A. One of my managers referred to me as that
2 in regards to a program when describing it to
3 someone, yes.

4 Q. What is his or her name?

5 A. His name is Jeff Batula.

6 Q. What's your current address?

7 A. [REDACTED], Maine.

8 Q. How long have you lived there?

9 A. Since December of 2017.

10 Q. Where did you live before then?

11 A. [REDACTED].

12 Q. Why did you move?

13 A. I bought a house.

14 Q. Were you renting at [REDACTED]?

15 A. Yes.

16 Q. How close are these two houses to each
17 other?

18 A. Maybe a quarter of a mile or less.

19 Q. Are you currently employed?

20 A. Yes.

21 Q. Who is your employer?

22 A. [REDACTED].

23 Q. Is it all right if I just refer to them as
24 " [REDACTED]

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1 A. Yes.

2 Q. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. How long have you been in that role?

16 A. Since December of 2015.

17 Q. Do you work from home?

18 A. Yes.

19 Q. Do you travel for work?

20 A. Sometimes.

21 Q. How often is sometimes?

22 A. It has ranged in frequency. This year I
23 have only traveled once. Last year I think I
24 traveled less than five times.

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1 Q. Who do you communicate with on WhatsApp?

2 I'm sorry, you don't have to answer that.

3 Have you ever communicated with anyone
4 on WhatsApp regarding Liberty Power?

5 A. No.

6 Q. Have you ever texted with your wife about
7 Liberty Power?

8 A. No.

9 (Ms. Parasmo confers with the witness.)

10 MR. BRUNDAGE: (To the reporter) Did you
11 get all that?

12 THE REPORTER: I didn't hear it.

13 MR. BRUNDAGE: We have to have our
14 record here.

15 MS. PARASMO: Sure. I'm instructing the
16 witness to take him -- of the marital privilege and
17 not to divulge communications with his wife.

18 MR. PRESTON: Which are confidential.

19 MS. PARASMO: Which are confidential.

20 Q. What's your telephone number?

21 A. What time frame are you referring to?

22 Q. Today.

23 A. I have more than one telephone number.

24 Q. What are they?

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1 A. 617-997-[REDACTED] 978-877-[REDACTED] 305-363-[REDACTED]
2 207-802-[REDACTED] 857-540-[REDACTED]

3 Q. [REDACTED] is your cell phone, correct?

4 A. Yes.

5 Q. [REDACTED] is a Google Voice number, correct?

6 A. No.

7 Q. What is that number?

8 A. It's a Voice-over-IP number.

9 Q. Is it associated with Google?

10 A. No.

11 Q. What is the 305 number?

12 A. A work number.

13 Q. Is it a residential number?

14 A. What do you mean by "residential"?

15 Q. If I call that number, will it ring in your
16 home in Maine?

17 A. Connected to a landline; is that what
18 you're asking?

19 Q. If I call that number, will it ring in your
20 home in Maine?

21 A. It's a VoIP number, V-O-I-P.

22 Q. It's a yes-or-no question. If I call the
23 305 number, will it ring in your home in Maine?

24 A. It will not cause a landline to ring in my

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1 home in Maine.

2 Q. How long have you had that telephone
3 number?

4 A. Between a year and two years.

5 Q. You testified a moment ago it won't ring.

6 Can you tell me why it doesn't ring?

7 A. It's a phone number that forwards calls to
8 my [REDACTED] number.

9 Q. Why do you have that call forwarding set
10 up?

11 A. So that I can answer calls.

12 Q. Answer calls from whom?

13 A. People calling it.

14 Q. Who calls it?

15 A. That's a very broad answer.

16 Q. Can you give me three examples of the
17 people who call it?

18 A. Defendants, but not -- sorry, not
19 defendants. A party who I had corresponded with
20 about allegations of TCPA violations.

21 Q. Can you give me two more examples?

22 A. Illegal telemarketers.

23 Q. Is it accurate to say that the 305
24 telephone number receives telemarketing calls?

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1 A. Yes.

2 Q. What percentage of the calls on -- received
3 on the 305 number are telemarketing calls?

4 A. I don't know.

5 Q. Can you give me an approximation?

6 A. The phone number is listed -- in question
7 is listed on the National Do Not Call Registry.

8 Q. Can you give me an approximation of how
9 many telephone calls received on the 305 number are
10 telemarketing calls?

11 A. The majority of them.

12 Q. Over 75 percent?

13 A. I would say that overall at least 75
14 percent of the phone calls that I receive on any
15 given number are unwanted and unsolicited phone
16 calls.

17 Q. Are they telemarketing calls?

18 A. What do you mean by "telemarketing"?

19 Q. I will define that as calls in which you're
20 being solicited to purchase something.

21 A. I don't know.

22 Q. You don't know if you're being solicited to
23 purchase something?

24 A. I don't have any way of classifying a call

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1 A. The 207 number, we originally had tried to
2 set up as a landline in the house, but the phone --
3 there's some sort of an issue with the phone lines
4 in my house where we're unable to get a dial tone,
5 and ultimately that number was ported over to
6 NumberBarn.

7 Q. What was your reaction when you were told
8 that you can't get a dial tone at your residence?

9 A. I was frustrated.

10 Q. Why?

11 A. Because I wanted a landline in my house.

12 Q. Why?

13 A. For emergency calls.

14 Q. When the 305 number forwards to the [REDACTED]
15 number, is an email created?

16 A. No.

17 Q. Is any sort of document created when a call
18 is forwarded?

19 A. What do you mean by "document"?

20 Q. A record.

21 A. A record is created with the NumberBarn
22 system probably similar to a CDR.

23 Q. Do you have access to that record in the
24 NumberBarn system?

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1 A. Yes.

2 Q. Do you use that number to create your call
3 archive?

4 A. That number is included in part of my call
5 archive.

6 Q. With regards to the 207 number, does that
7 number create a record in NumberBarn?

8 A. Yes.

9 Q. Can you describe this record for me,
10 please?

11 A. I've already described it.

12 Q. Can you describe this record for me,
13 please, of NumberBarn?

14 A. The record is a date, time, displayed
15 caller ID, the length of the call and the number
16 that was called.

17 Q. Do you copy all of that information into
18 your call archive?

19 A. Yes.

20 Q. Do you do that manually, or is it done
21 automatically?

22 A. I do it manually.

23 Q. How often do you do that?

24 A. Once a month.

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1 Q. Why once a month?

2 A. NumberBarn only retains records for a year,
3 so at the end of every month, I export the -- sorry.
4 At the conclusion of one month, one -- for example,
5 at the end of April, I exported the April call --
6 the April call records that came out of NumberBarn
7 and included them in my archive.

8 Q. You're referring to last month, April 2019?

9 A. Yes.

10 Q. Do you have an approximate number of how
11 many calls that was?

12 A. I don't know.

13 Q. Do you have an approximate number?

14 A. No.

15 Q. Was it zero -- was it 50?

16 A. I don't know.

17 Q. Was it a hundred?

18 A. I don't know.

19 Q. You referenced an 857 number.

20 A. Yes.

21 Q. Is that your wife's cell phone number?

22 A. No.

23 Q. What number is that?

24 A. It was her previous cell phone number, and

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1 she wanted to have a Maine phone number, and we
2 wanted to retain that number so that if anybody had
3 that number, they would still be able to contact us,
4 or if anybody texted that number, I would be able to
5 direct them to her new number.

6 Q. Is the 857 number a VoIP number?

7 A. Yes.

8 Q. Is it VoIP'd through NumberBarn?

9 A. Yes.

10 Q. Do you export the NumberBarn data to your
11 call archive for that number?

12 A. Yes.

13 Q. Is that number included in your call
14 archive for the 207 and the 305 numbers?

15 A. Yes.

16 Q. Is the 305 number on the Do Not Call List?

17 A. Yes.

18 Q. After you obtained the 305 number, when did
19 you put it on the Do Not Call List?

20 A. I don't remember if it was on the Do Not
21 Call List when I first obtained it, but I believe
22 that I did put it on the -- either attempt or did
23 put it on the Do Not Call List.

24 Q. Would it be accurate to say you checked to

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1 Q. Right, okay. Why do you have the 305
2 telephone number?

3 A. As the result of some situations that have
4 occurred in the past, I'm no longer comfortable
5 giving out my direct phone number to some --
6 particularly some TCPA defendants or TC -- potential
7 TCPA violators.

8 Q. So you have that cell phone number to catch
9 potential TCPA violators, correct?

10 A. No. I have that phone number to facilitate
11 communications so that I don't need to give out my
12 direct 617 number to people who I don't know.

13 Q. Facilitate communications about what?

14 A. Talking.

15 Q. On what subjects?

16 A. I don't know that there's a specific
17 subject that I -- there's -- I don't think that
18 there's a specific bucket of, you know, if someone
19 is going to call me about this subject, then I give
20 this number, but -- no, on occasions I have -- when
21 I don't trust that my information is going to be
22 held securely, I will enter the 305 number or one of
23 my other phone numbers so that it will ring there
24 and that a party will not have my direct 617 number.

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1 Q. What area code is 305?

2 A. South Florida.

3 Q. Did you request that area code?

4 A. Yes. There's a song that I used to listen
5 to and sometimes still listen to when I work out. I
6 think it's called like "305 Till I Die," or
7 something like that. It's a rap song.

8 Q. What area code is 207?

9 A. Maine.

10 Q. Did you request that area code?

11 A. It was provided to me, but on top of that I
12 wanted a Maine phone number.

13 Q. You testified a moment ago that you give
14 out the 305 or 207 numbers to parties you don't
15 trust; is that correct?

16 A. Or 978, yes.

17 Q. Or 978. What would cause you not to trust
18 a party?

19 A. That I don't have confidence that they
20 would be able to handle my information in a secure
21 and professional manner.

22 Q. What facts create a lack of confidence that
23 they would not handle your number in a safe and
24 professional manner?

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1 A. What do you mean by "facts"? Are you
2 asking for historical incidents where there have
3 been indications of misconduct?

4 Q. I'm asking, what would cause you to give
5 someone the 305 or 207 VoIP numbers, as opposed to
6 your actual cell phone number, 617?

7 A. If I was not comfortable and did not know
8 them, particularly a business or, you know, putting
9 it on a document, I would put down alternate phone
10 numbers so they wouldn't have my 617 number.

11 Q. What would make you not comfortable?

12 A. Doing business with -- locally in Maine,
13 you know, I prefer to just -- people don't -- Maine
14 only has one area code, so I'd prefer to not give
15 out a cell phone number that indicates I'm not from
16 the area, just because it's also inconvenient 'cause
17 oftentimes people will assume that the first three
18 digits are 207, and then if I give them a -- I say,
19 you know, " [REDACTED] | [REDACTED] then they go, "Oh," you
20 know, "61" -- "oh, it's that area code," and, you
21 know, it just creates a little more -- it's just
22 unnecessary friction.

23 Q. When you say "friction," you mean people
24 think you're not from Maine?

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1 A. Not even -- in some cases, yes, but, you
2 know, not necessarily that. You know, that's not
3 the only reason to do that; it's just the
4 convenience factor as well.

5 Q. The end result of this convenience factor,
6 though, is you alleging TCPA violations, correct?

7 A. No. It's easier to screen calls if I see
8 that a party calling me is, you know, calling one of
9 the -- kind of the private -- the numbers I use to
10 protect my privacy. Then I'll know, you know,
11 whoever it is that's calling me, you know, "they're
12 not a trusted party that has my direct number" sort
13 of a thought.

14 Q. When you say "to screen calls," you mean
15 when you screen the calls on the [REDACTED] number?

16 A. When I screen the incoming calls.

17 Q. On the [REDACTED] cell phone number?

18 A. Yes.

19 Q. So if you see on the [REDACTED] cell phone number
20 the 305 or the 207 number, your testimony is that
21 they're not a trusted party?

22 A. No, I don't know that that's completely
23 accurate. It could be, you know, a phone number
24 that was given out out of convenience to, you know,

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1 not having to state the area code and just say
2 "802-1001."

3 Q. Do you allege that Liberty Power called the
4 305 number?

5 A. No.

6 Q. Do you allege that Liberty Power called the
7 207 number?

8 A. Let me say this: For production of
9 documents, it's my understanding discovery was
10 bifurcated and production of defendants' documents
11 is still ongoing. As of this time I'm not aware of
12 any calls to those numbers, but that could certainly
13 change in the future.

14 Q. Your testimony is that you're not at this
15 time alleging that Liberty Power called the 207
16 number?

17 A. Correct.

18 Q. Are you alleging that Liberty Power called
19 the 857 number?

20 A. I don't know.

21 Q. You don't know if you're alleging it?

22 A. As of this time, I'm not aware of any phone
23 calls that Liberty placed to the 857 number.

24 Q. At this time you're not alleging Liberty

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1 facts the same for the [REDACTED] number?

2 A. Yes. My wife -- when we had that [REDACTED]
3 number set up for emergency purposes, my wife got
4 sick of the continual phone calls, and I set up call
5 forwarding so that she would still be able to make
6 an outbound emergency call.

7 Q. Are we talking about the [REDACTED] number?

8 A. No, we're talking about [REDACTED]

9 Q. So the [REDACTED] number did not ring in
10 September 2016, correct?

11 A. It did ring.

12 Q. Did it make an audible noise when someone
13 called that number?

14 A. On my cell phone, yes.

15 Q. In September 2016 the [REDACTED] was physically
16 connected to a telephone, correct?

17 A. Yes.

18 Q. It was a telephone -- well, forget that
19 question.

20 But the telephone that you're referring
21 to did not make an audible ring, correct?

22 A. The calls were, for that line -- incoming
23 calls for that line were forwarded to [REDACTED] which
24 would then be forwarded to [REDACTED]

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1 Q. Was the [REDACTED] telephone number connected to
2 a physical telephone?

3 A. Yes.

4 Q. Was that a separate telephone than the [REDACTED]
5 number or the same telephone?

6 A. It was separate. It was a -- the jack was
7 in a different part of the house.

8 Q. Why did you obtain these two telephone
9 numbers?

10 A. The [REDACTED] number was obtained because at the
11 time I was working out of the house and my wife
12 wanted to have a phone number for emergency
13 purposes.

14 The [REDACTED] number was obtained because I
15 had intend -- initially intended to have a business
16 line at my house when I got a new job for make --
17 the ease of clients contacting me, and ultimately, I
18 did not end up using it for that purpose.

19 Q. What was the date that you ultimately did
20 not end up using it for business?

21 A. I never ended up using it for business.

22 Q. Why did you keep it, then?

23 A. There was some sort of a promotion. And I
24 don't remember the exact details, but I got some

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1 correct?

2 A. Yes.

3 Q. So you couldn't distinguish which number
4 was called?

5 A. If some -- when you -- you mean if someone
6 called the 911 -- if someone called the [REDACTED] number
7 and the [REDACTED] number showed up on my phone, I would
8 not be able to distinguish; is that what you're
9 asking?

10 Q. Close, but no. I'm asking if you could
11 distinguish -- when you received a [REDACTED] incoming
12 call on your cell phone, if you could distinguish
13 whether the [REDACTED] number was called or the [REDACTED]
14 number was called.

15 A. Well, what -- I think that what I had done
16 to try to clear that up was that when I would
17 receive a call on -- I don't remember if it -- I
18 think it was both [REDACTED] and [REDACTED] I think that it
19 would also a -- in addition to email, I think it
20 also would send me a text message so that I would --
21 it would be an indication that the forwarded Google
22 Voice call was a text -- was from a landline, which
23 would -- again, the [REDACTED] number was a phone number I
24 had for a very long time, so it helped me with

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1 screening the calls.

2 Q. So when someone called either the [REDACTED]
3 number or the [REDACTED] number, an email and a text
4 message was generated?

5 A. Yes.

6 Q. Did you provide those emails and text
7 messages to your counsel?

8 A. The text messages, I don't believe that I
9 have. The emails, I believe I did.

10 Q. You did not provide the text messages to
11 your counsel?

12 A. No.

13 Q. Why not?

14 A. The settings on my phone are such that --
15 actually, I don't know what the settings were on --
16 I don't even know which phone I had at the time that
17 I had received those text messages, so I don't
18 believe that the text messages are -- would be in my
19 control anymore, if they even exist. I think
20 they've been deleted, or not deleted but disappeared
21 with whatever phone I had at the time. Does that
22 make sense?

23 Q. It does not.

24 A. All right. So I had a cell phone at the

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Q. In September 2016 was the [REDACTED] telephone number a residential telephone number?

3 | A. Yes.

4 Q. So in September 2016 you had three separate
5 residential telephone numbers?

6 A. No, I had four.

7 9. What was the fourth?

8 | A. [REDACTED]

9. How many do you have today as we sit here?

10 A. How many residential phone numbers do I
11 have today?

12 Q. Yes.

A. Five, the numbers we discussed earlier.

14 Q. Right.

15 MR. BRUNDAGE: How are we doing on
16 videotape capacity?

VIDEOGRAPHER: We have 20 minutes.

18 (Marked, Exhibit 2, Part of call log,
19 one page.)

20 Q. Mr. Katz, the court reporter is handing you
21 a document which she has marked as Exhibit 2.

22 Please let me know if you recognize this document.

A. (Witness reviews document.) yes, I do.

Q. What is this document?

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1 A. Yes.

2 Q. And is it your testimony that this chart
3 depicts calls that the [REDACTED] number received from
4 508-202-[REDACTED] I know it depicts a lot of other
5 things, but in a general sense?

6 A. Yeah, I think you meant [REDACTED] but yeah, I
7 think it would be accurate to say that this depicts
8 calls received where the displayed caller ID was
9 that phone number.

10 Q. Okay. Do you know if you answered any of
11 these calls?

12 A. Yes.

13 Q. Do you know which ones you answered?

14 A. Well, without the complaint in front of me,
15 I think that I answered the two on 10/3 and one on
16 10/14.

17 Q. Why did you answer those calls?

18 A. Because my phone was ringing.

19 Q. Did your phone ring for the calls from
20 9/8/2016 to 9/27/2016?

21 A. I think that it did, but, you know, there's
22 one thing that's -- the reason that you see some of
23 these -- you know, the 12/23 listed three times
24 or on 10/14 you see 16:45 listed three times and

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1 A. I don't remember. I don't know that it was
2 a newspaper.

3 Q. Let's start with the first call you said
4 you answered, October 3, 2016, 1:27 p.m. Can you
5 tell me about that call, please?

6 A. My recollection is that I received a call
7 and I could not hear the caller.

8 Q. Did the caller say anything?

9 A. He was saying things; I don't believe that
10 I could understand him.

11 Q. How long was the call?

12 A. It looks like it was less than two minutes.

13 Q. Where is that data point, length of call,
14 on here?

15 A. That would be 13:29 minus 13:27.

16 Q. So your basis for that, the October 3,
17 2016, 1:27 p.m. call was less than two minutes is
18 that you got an anonymous call two minutes later?

19 A. Yes.

20 Q. How does an anonymous call link to
21 508-202-[REDACTED]

22 A. My recollection is that the party called me
23 back again due to the connection issue.

24 Q. It was the same individual?

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1 A. Could we listen to the recordings?

2 Q. Do you know if it was the same individual?

3 A. Well, I'm asking if we could listen to the
4 recordings. I don't know that if -- I don't know if
5 it was the same individual.

6 Q. How long was that second call?

7 A. I believe it was fairly lengthy.

8 Q. What was the substance of it?

9 A. I believe that that was the call where I
10 was -- asked to not be called anymore. I think it
11 was also when I asked for a copy of the Do Not Call
12 policy. I think I was transferred to Calibrus three
13 times. I think the agent -- I think that that was
14 also the call where the agent told me that if I
15 wanted to stop receiving calls, I had to sign up for
16 Liberty Power service.

17 Q. Does 29 minutes sound right for the length
18 of that call?

19 A. It sounds about right. I think that might
20 be the call.

21 Q. You seek to avoid telemarketing calls,
22 correct?

23 A. Yes.

24 Q. You seek to avoid interacting with

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1 related to housing discrimination. This is a --
2 certainly a tactic that seems to be supported by the
3 regulatory authorities who are responsible for the
4 TCPA.

5 Q. I asked a poorly worded question. You
6 feign interest in the service being sold to gain
7 knowledge about who is calling you?

8 A. No, I'm interested in the service being
9 sold because I want to find out who's calling me.

10 Q. When you had this 29-minute call on October
11 3, were you interested in switching to Liberty
12 Power?

13 A. I didn't know conclusively whether it was
14 actually Liberty Power that was calling me.

15 Q. Were you interested in switching
16 electricity suppliers?

17 A. If the -- in relation to that specific
18 call?

19 Q. Yes.

20 A. I think that if they had actually offered a
21 discount instead of a significant increase in price
22 compared to what my electricity supply rate was, I
23 may have actually been interested.

24 Q. Who was your electricity supplier in 2016

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1 A. I don't know if that was said by the caller
2 or not.

3 Q. You also testified a moment ago that you
4 answered one call on October 14. There are four
5 listed here. This is obviously not a memorization
6 test; I'm not going to ask you which call it was;
7 but do you recall the substance of whatever call
8 that you answered?

9 A. No, I don't -- my memories are particularly
10 around the frustration of the 10/3 call.

11 Q. Why were you frustrated?

12 A. The -- can we listen to the tape and maybe
13 we can go play-by-play over the misrepresentations
14 made about the money that I would be saving or the
15 illusion the caller was attempting to create, that
16 it was Eversource placing the call, prominently
17 saying the Eversource name as a brand, to attempt to
18 confuse consumers? Can we listen to the recording
19 so that we can talk about why I felt that it was so
20 important to determine the identity of the caller?

21 Q. You just explained.

22 A. Okay.

23 Q. Do you recall being deposed in Slovin v.
24 Sunrun in -- on June 26, 2017?

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1 A. I believe that those would be the calls
2 referenced in the complaint that we were discussing
3 earlier.

4 Q. I'd like you to keep that handy, please,
5 because we're going to do a cross-reference here.
6 If you go down to the third from the bottom, is that
7 a call in the complaint? It says "nine minutes."

8 A. On 10/14 at 4:46 p.m.?

9 Q. Yes, sir. And this is on the top of page
10 14 of Exhibit 3.

11 A. All right, thanks. That's what I was
12 looking for. (Witness reviews document.) Yes, I see
13 that.

14 Q. On the top of 14 -- page 14 of Exhibit 3,
15 the second amended complaint, there are two calls
16 listed on 10/14. The Verizon records, Exhibit 4,
17 only evidence one call. Can you explain that
18 discrepancy?

19 A. Could we listen to that record, please?

20 Q. I don't know if I have it.

21 A. I think it's been produced. I'd like to
22 listen to it.

23 Q. I'd like you to answer the question.

24 A. I believe that if we were to listen to the

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1 recording, my -- if I were to -- let me just do some
2 other cross-checks here. So... (Witness reviews
3 document). Yeah, there's another example of where
4 this happens on 9/8, where there are multiple calls
5 and only one call appears to be on the Verizon
6 record. That would be on page 32.

7 Q. You're a smart man, Mr. Katz, 'cause that's
8 where my next questions were going.

9 A. Oh. I would suspect that the reason why
10 not all of them are on Verizon's end is if I was
11 connected to someone and speaking or if the line was
12 tied up, that it is probably only counting the
13 duration of when the phone line was in use, so if
14 something was -- if I had to guess, if something was
15 bounced because the phone number was already in use
16 as a result of the, you know, triple or duplicate
17 dialing, I would guess that that's what happened and
18 why the records aren't fully reflective of that.

19 Q. You're just guessing, though, right?

20 A. Yes. The reason I asked if we could listen
21 to the recording was that if that had actually
22 happened, there would -- it would have been evident
23 from listening to the recording if there was a beep,
24 you know, for another incoming call. Particularly

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1 if I had answered the first call at 16:45:21, then
2 it almost certainly would have been -- then if I had
3 answered the 21-second call at 16:45:21, then that
4 recording would have the sound of another incoming
5 call at 16:45:51.

6 Q. In the recordings that you are aware of in
7 this case, in the telephone call recordings that you
8 are aware of for this case, are you aware of any
9 recordings that have a call waiting beep?

10 A. I think that one we listened to yesterday
11 did, which is why I asked to listen to the
12 recording.

13 Q. So that's one call out of 13?

14 A. Well, I --

15 Q. I'm sorry, that misstates the record.
16 You're aware of one call recording that has a call
17 waiting beep?

18 A. At least one.

19 Q. Who is -- well, let me know if you
20 recognize this telephone number: 866-732-6182.

21 A. Where is that listed?

22 Q. Do you recognize that number?

23 A. Say that number again.

24 Q. 866-732-6182.

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1 Q. Have you ever used the name "James McGill"?

2 A. Jimmy -- yeah, I --yes, I believe, yes,
3 that is a reference to the television show Better
4 Call Saul.

5 Q. Quite a good show.

6 A. Yes.

7 Q. Have you ever used any other fake names
8 besides those two?

9 A. Yes.

10 Q. What names?

11 A. I don't know.

12 Q. How many other names?

13 A. I don't know.

14 Q. Five other names? Fifteen other names?

15 A. I have no idea.

16 Q. How can the telephone calls that you allege
17 in this complaint be intrusive and harassing if your
18 telephone that's called doesn't actually ring?

19 A. They're intrusive and harassing -- the --
20 you're acting as though the only harm is if the
21 phone itself rings, but the harm is that the calls
22 exist. I'm on the National Do Not Call List for a
23 reason. I tried to avoid these calls to begin with.
24 And I think that it's self-evident, especially from

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1 the public records requests with Massachusetts,
2 where I found the investigation that occurred
3 shortly after my complaints in Massachusetts with
4 the DPU, and also what's happened with PURA in
5 Connecticut and I think New York as well also for
6 the door-to-door solicitation, that there are very
7 serious compliance and ethical issues with how
8 Liberty Power attempted to acquire customers, and
9 one of those methods was telemarketing, which they
10 included -- which they openly admit to in their
11 public records when they're filing with regulatory
12 authorities.

13 Q. The only reason [REDACTED] rang in 20 --
14 September and October of 2016 is because you set up
15 call forwarding to your cell phone, correct?

16 A. No. The reason it rang is because I set up
17 call forwarding so that my wife wouldn't have to
18 hear the annoying calls or so that I wouldn't have
19 to walk across the house and pick up the phone.

20 Q. Couldn't you just turn off the ringer
21 instead of setting up call forwarding?

22 A. I'm under no obligation to accommodate the
23 needs of telemarketers who habitually violate the
24 law.

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1 Q. You are not, that is correct, but you could
2 have avoided what you allege to be intrusive and
3 harassing by simply turning off the ringer, correct?

4 A. Well, I was already on the National Do Not
5 Call List, so that was my effort, which I think
6 would be much more broad than turning off the
7 ringer.

8 Q. But instead, you set up call forwarding to
9 create records of these calls, correct?

10 A. So that I could identify and hold the
11 parties accountable who are responsible for those
12 calls, I engaged in steps required to positively
13 identify the companies responsible for those calls.

14 Q. On your call log which we looked at a
15 moment ago, you identified 508-202-[REDACTED] as a Liberty
16 Power telephone number, but you said you didn't pick
17 up the telephone until the tenth call, which is on
18 October 3, the first call being on September 8. If
19 you knew it was from Liberty Power, why would you
20 pick up at all?

21 A. Why do you think that I knew that the call
22 was from Liberty Power?

23 Q. Well, your log says on September 8 you got
24 a call from Liberty Power.

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1 A. That doesn't necessarily -- that doesn't --
2 that's not an indication that the entry of Liberty
3 Power was made on September 8.

4 Q. So it's backfilled?

5 A. I don't think that "backfilled" -- I don't
6 think that "backfilled" is an appropriate way to
7 describe it. It was filled in when the party
8 responsible for 508-202-[REDACTED] was discovered, is what
9 my guess would be.

10 Q. Was that on October 3, when you took that
11 29-minute call?

12 A. I think so, but I don't remember exactly.

13 Q. So if you identified Liberty Power as an
14 unsolicited telemarketer on 10/3, why did you answer
15 the phone again on October 14?

16 A. How would I know who was calling me on
17 October 14?

18 Q. Because it's the same telephone number.

19 A. That phone number wouldn't have shown up on
20 my cell phone when it was ringing; it would have
21 shown up as the Google Voice number, the [REDACTED]
22 number.

23 I should also add, my recollection is
24 that on October 3, after receiving the call from

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1 Liberty Power, I directly complained to them in an
2 email, and they lied to me in their response after
3 Mezzi had confirmed that they were the part -- they
4 did make those calls or they did make that call.

5 MR. BRUNDAGE: I think that's lunch.

6 VIDEOGRAPHER: The time is approximately
7 1:32, and we are off the record.

8 (Luncheon recess at 1:32 p.m.)

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1 A.

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. Some bars begin with a small black square. The bars are set against a white background.

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1 email?

2 A. I don't have any memory of this email, but
3 I'm able to interpret that it says that it is from
4 me to Oasis Energy.

5 Q. And it says, "Hello, Please add me to your
6 company's Do Not Call List. Thanks, Sam"; is that
7 correct?

8 A. That is what it says.

9 Q. Do you have any recollection of why you
10 wrote that email?

11 A. If I had to speculate, it would probably be
12 because the contract was up and I didn't want to be
13 bothered -- I didn't want to be bothered by them
14 with trying to re-enroll me.

15 Q. If you didn't want to be bothered and you
16 wanted to be on their company's Do Not Call List,
17 why didn't you email them any of your phone numbers?

18 A. Because my phone number was in the original
19 email from September 30, including my account
20 number, my service address, and my name.

21 Q. Well, that's one of your phone numbers, but
22 you had several others in March 2016, correct?

23 A. Yes.

24 Q. Why wouldn't you provide them all your

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1 phone numbers if you didn't want to be disturbed?

2 A. The phone number here is 617-997-[REDACTED]

3 Q. Right, but you didn't provide them your

4 [REDACTED] or [REDACTED] or your [REDACTED] phone number?

5 A. Okay.

6 Q. Why not?

7 A. Because they clearly had my [REDACTED] [REDACTED]
8 number, so if that was the number linked to my
9 account, it's reasonable to conclude that if they
10 were going to call me, they would be calling me with
11 the phone number that was already linked to my
12 account.

13 (Marked, Exhibit 8, Email chain, top one
14 of which is from S. Katz to customercare@
15 libertypowercorp.com dated 10/3/2016, KATZ
16 000013-14.)

17 Q. All right, Mr. Katz, we're moving right
18 along, almost to the finish line.

19 The court reporter has handed you what's
20 been marked as Exhibit 8. Please let me know if you
21 recognize this two-page document. It is Bates KATZ
22 13 and 14.

23 A. (Witness reviews document.) It appears to
24 be an email from October 3, 2016.

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1 Q. If you turn to KATZ 14, which is page 2,
2 please. Is this an email from you to Liberty Power
3 saying, "Please add me to your Do Not Call List" and
4 providing three telephone numbers?

5 A. Yes.

6 Q. The numbers you provided are your cell
7 phone, [REDACTED] one of your Fios numbers at the time,
8 [REDACTED] and your Google number of [REDACTED] is that
9 accurate?

10 A. That's correct, yes.

11 Q. Why did you not also include your [REDACTED]
12 Verizon Fios number which you had at the time?

13 A. I mean, I think it's important to add the
14 context that this was October 3, which was the same
15 day that I had received a call on my [REDACTED] number. I
16 don't remember why I didn't include [REDACTED] I don't
17 know.

18 Q. Why did you send this email to David -- to,
19 among others, David Hernandez?

20 A. I wanted to make sure that my phone
21 number -- also, my understanding is that even though
22 they told me that they had DNC'd me, they didn't
23 actually do it until several months later; but my
24 inclusion of David Hernandez would be to try to

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1 ensure that the right people got the message and
2 that it didn't just end up in a customer service
3 queue with employee -- in an effort to contact the
4 -- one of the listed owners of the company, it would
5 be to make sure that the right people at the company
6 who have the capability to make decisions would make
7 that -- make sure that it was followed through with.

8 Q. On the first page, Bates 13, you write at
9 the top, "The calls were claiming to be made on
10 behalf of Eversource"; is that correct?

11 A. That's what it says, yes.

12 Q. In the telephone calls were they claiming
13 to be made on behalf of Eversource?

14 A. Can we listen to the calls, please?

15 Q. I don't have every call recording in front
16 of me.

17 A. Well, I think if we listen to the calls,
18 then we would be able to ascertain, you know, the --
19 why I felt like they were rep -- Eversource was
20 the -- they were representing that they were made by
21 Eversource.

22 Q. Absent the calls, you have no recollection?

23 A. My recollection is that the language and
24 the way that the representative was speaking on the

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1 phone, as well as the prerecorded message was
2 clearly and prominently using the Eversource name in
3 an effort to mislead company -- mislead consumers
4 about the companies who were -- the company who was
5 making the call. I think it -- the recordings will
6 provide clarity on that.

7 Q. You wrote, "I've been receiving them for
8 months." Isn't it true, though, that you'd only
9 been receiving calls allegedly for one month,
10 September 8, 2016?

11 A. No, I had received prerecorded voice calls
12 claiming affiliation with Eversource for much longer
13 than the calls that are indicated here (indicating).

14 Q. Affiliation with Eversource or affiliation
15 with Eversource and Liberty Power?

16 A. The prerecorded messages for a -- months,
17 as indicated here, were referencing Eversource.

18 Q. Do you see underneath your email, where
19 it's an email from customercare@libertypowercorp, it
20 says, "Hello, we do apologize for any inconvenience.
21 We have submitted your request to have the below
22 numbers added to the Do Not Call List. Can you
23 please also provide what state you're located in"?
24 Do you see that?

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1 A. It might or it might not. I should add
2 that part of the situation with the [REDACTED] number is
3 when I had previously made a DNC request, companies
4 started calling me on that number, when I provided
5 all of them.

6 (Marked, Exhibit 9, Email chain, top one
7 of which is from customercare@libertypowercorp.com
8 to S. Katz dated 10/4/16, KATZ 000065.)

9 Q. Mr. Katz, the court reporter has handed you
10 a one-page document which is labeled Exhibit 9. It
11 is Bates 65. Please take a look at it and let me
12 know if you recognize it.

13 A. (Witness reviews document.) I think I
14 recognize it, yes.

15 Q. What is this document?

16 A. An email.

17 Q. Did you receive this email?

18 A. That's what it says, yes.

19 Q. Do you have reason to believe you did not
20 in fact receive it?

21 A. I think I did.

22 Q. You think you did receive it?

23 A. Yes.

24 Q. On the third line down, do you see where it